

OGC 81-02670
1 April 1981

MEMORANDUM FOR: Deputy Director for Operations
Deputy Director for National Foreign Assessment
Deputy Director for Administration
Deputy Director for Science and Technology
Director of Personnel Policy, Planning,
and Management
Comptroller
Inspector General
Legislative Counsel
Director of Public Affairs
Director, Equal Employment Opportunity
Director, National Intelligence Emergency
Planning Staff

25X1

FROM : [REDACTED]
Associate Deputy General Counsel

SUBJECT : Proposed Revisions to Non-Restriction Sections
of E.O. 12036

REFERENCE : Memo to Multiple Addressees, Same Subject,
dated 20 March 1981 (OGC 81-02321)

1. Based on the responses to the reference, we have compiled a number of changes that need to be considered for the non-restriction sections of E.O. 12036. A guiding principle has been to keep the number of changes to a minimum but assure that all changes that are needed be proposed. A redraft of the pertinent parts of the Order is attached. The bold face type indicates additions; the strikeovers indicate deletions. Outlined below are the bases for the various proposals.

2. Section 1: As you remember from the reference, the DCI has already made recommendations to the President regarding the NSC decisionmaking structure; thus, further proposals to Sections 1-1, 1-2 and 1-3 need not be considered at this time. I propose that following these initial sections, however they are restructured, we need a section to deal with various duties and responsibilities of the U.S. officials who discharge foreign intelligence responsibilities (labeled on the draft as Section 1-X). Obviously, this section should begin with a description of the DCI's duties and responsibilities.

3. Section 1-X01: The added language makes it clear that what the Order details is that authorized by law -- primarily, but not exclusively, the 1947 and 1949 Acts. At the suggestion of OPA, Section 1-X01(a) is added to recognize the President's

elevation of the DCI to Cabinet rank. At the suggestion of the IG and NFAC, Section 1-601(d) is replaced by new Section 1-X01(e) which is derived from former Section 1-502(a).

4. At the suggestion of the DDO, Section 1-X01(h) is broadened to include all Executive Branch intelligence arrangements with foreign governments.

5. At the suggestion of the DDA, Section 1-X01(i) was broadened to cover all improper classification actions. Related Sections 1-X01(j), at the suggestion of the IG, and 1-X01(k), at the suggestion of the DDO, were added to clarify and strengthen the DCI's security and sources and methods roles. Section 1-X01(j) replaces and simplifies former Section 1-604 and Section 1-X01(k) replaces former Section 1-601(k).

6. At the suggestion of the IG, Section 1-X01(m) is broadened so as not to be limited to advising Defense. Former Section 1-601(l) is eliminated as it is duplicative of new Section 1-X01(s).

7. Appropriate parts of former Section 1-602 National Foreign Intelligence Program Budget relating to DCI duties and responsibilities are included as proposed Sections 1-X01(n) through (r).

8. At the suggestion of NFAC, former Section 1-603 is rewritten as Section 1-X01(s), adding language from former Section 1-502(c). Sections 1-X01(b) and 1-X01(s) are intended to cover the substantive requirements of former Section 1-606, therefore it has been eliminated.

9. At the suggestion of NFAC, Section 1-X01(t) is derived from former Section 1-1111. Also at NFAC's and OPA's suggestion, Section 1-X01(u) is added. Sections 1-X01(v) and 1-X01(w) are derived from former Sections 1-502(d) and 1-503, respectively.

10. Section 1-X02 repeats the substance of the first part of former Section 1-504; however, the part of 1-504 requiring the conduct of regular practice exercises to transfer the DCI's national tasking authority to the Secretary of Defense has been eliminated.

11. Section 1-X03(a) repeats much of the substance of former Section 1-605 but strengthens the DCI's authority to obtain necessary information and support. Section 1-X03(b) repeats the substance of former Section 1-602(b) and (e) and Section 1-X03(c) repeats the substance of former Section 1-602(g).

12. Section 1-X04(f) is left blank so that language dealing with reporting crimes (former Section 1-706) that results from the discussions about the restriction section can be added.

13. Section 1-Y repeats the former Section 1-8 relating to CIA's responsibilities. Biographic intelligence is added to the list of foreign intelligence categories in Section 1-Y02. At the suggestion of the DDO the Agency's responsibilities related to narcotics production and trafficking will be limited by Section 1-Y03 to that involving strategic intelligence. Section 1-Y04 is broadened beyond the former limitation of agencies within the Intelligence Community.

14. The changes made to Sections 1-11 and 1-12 merely reflect the DCI's responsibility to provide appropriate guidance in foreign intelligence matters. NFAC suggests the elimination of former Section 4-210(e) as it is duplicative of Section 4-210(b) because the DCI and Secretary of Defense in the end must decide what is strategic and what is tactical intelligence.

15. The attached draft does not address the oversight provisions of E.O. 12036 as they are now being examined separately as a result of discussions between the DCI and various White House personnel.

16. The Agency's position on all these matters must be put in final form by no later than COB Thursday (even if we make that deadline we will be a day later than the original schedule). As you will see, I have not been able to just mechanically combine all of the suggestions that were contained in the responses to the reference. In several cases similar suggestions were combined. In some cases proposals were restructured. Hopefully, I have accommodated all the major points. We plan to present these proposals to the DDCI for his approval of an Agency position Friday morning. Accordingly, I need any further response you might have prior to COB Thursday in order that it can accompany our paper to the DDCI Friday morning.

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Attachment:
As stated

1-X United States Officials with Foreign Intelligence Duties and Responsibilities of the Director of Central Intelligence.

1-X01. Duties and responsibilities of the Director of Central Intelligence: In order to discharge the duties and responsibilities prescribed by law, the Director of Central Intelligence shall be responsible directly to the NSC and, in addition to the duties and responsibilities specified elsewhere in this Order, shall:

(a) Serve as a member of the Cabinet.

(b) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(c) Be the head of the CIA and of such staff elements as may be required for discharge of the Director's Intelligence Community responsibilities;

(d) Act, in appropriate consultation with the departments and agencies, as the Intelligence Community's principal spokesperson to the Congress, the news media and the public, and facilitate the use of national foreign intelligence products by the Congress in a secure manner.

(d) Develop, consistent with the requirements and priorities established by the PRG, such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence.

(e) Translates national foreign intelligence objectives requirements and priorities developed by the PRG NSC into specific collection guidance objectives and targets for the Intelligence Community;

(f) Promote the development and maintenance of services of common concern by designated foreign intelligence organizations on behalf of the Intelligence Community;

(g) Ensure implementation of special activities;

(h) Formulate policies concerning intelligence arrangements with foreign governments, and coordinate intelligence arrangements with foreign governments, and coordinate intelligence relationships between departments and agencies of the Intelligence Community and the intelligence or internal security services of foreign governments;

(i) Conduct a program to protect against improper national security classification of foreign intelligence information;

(j) Develop specific means to protect intelligence sources and methods from unauthorized disclosure;

(k) Establish minimum security standards and procedures applicable to all individuals and entities having access to foreign intelligence and counterintelligence and intelligence sources and methods information;

(l) Establish the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information and products;

(l) Participate in the development of procedures required to be approved by the Attorney General governing the conduct of intelligence activities;

(m) Establish uniform criteria and procedures for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise appropriate departments and agencies ~~the Secretary of Defense~~ concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

~~Provide appropriate intelligence to departments and agencies of within the Intelligence Community, and~~
~~If the National Foreign Intelligence Program Budget, the Director of Central Intelligence shall to the extent~~
~~consistent with applicable law have full and exclusive authority~~
~~for approval of the National Foreign Intelligence Program budget~~
~~submitted to the President. Pursuant to this authority,~~

(n) (a) The Director of Central Intelligence shall provide guidance for National Foreign Intelligence program and budget development to Intelligence Community program managers and heads of component activities and to department and agency heads;

(o) The Director of Central Intelligence shall review and evaluate the national program and budget submissions and Develop with the advice of the NIFB and the departments and agencies concerned, the consolidated National Foreign Intelligence Program budget and present it to the President through the Office of Management and Budget;

(p) The Director of Central Intelligence shall present and justify the National Foreign Intelligence Program budget to the Congress;

(q) The Director of Central Intelligence shall have full and exclusive authority for reprogramming National Foreign Intelligence Program funds, in accord with guidelines established by the Office of Management and Budget, but shall do so only after consultation with the head of the department or agency affected and appropriate consultation with the Congress;

(r) The Director of Central Intelligence shall monitor National Foreign Intelligence Program implementation and, as necessary, may conduct program and performance audits and evaluations.

(s) If the responsibility for National Foreign Intelligence, The Director of Central Intelligence shall have full responsibility for production and dissemination of national foreign intelligence and have authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations in order to ensure the timely exploitation and dissemination of data gathered by national foreign intelligence means. In doing so, the Director of Central Intelligence shall ensure that diverse points of view are considered fully and that differences of judgment within the Intelligence Community are brought to the attention of national policymakers.

(t) Ensure, together with the Secretary of Defense, who shall provide the Director of Central Intelligence all information necessary for this purpose, that there is no

unnecessary overlap between national foreign intelligence programs and intelligence-related activities of the Department of Defense.

(u) Maintain, subject to the direction, control, and management of the DCI, an Intelligence Community Staff to coordinate the national foreign intelligence program and budget and national foreign intelligence collection activities.

(v) Provide to departments and agencies having information collection capabilities or intelligence assets that are not a part of the National Foreign Intelligence Program advisory tasking concerning collection of national foreign intelligence. Particular emphasis shall be placed on increasing the contribution of departments or agencies to the collection of information through overt means.

(w) Resolve tasking conflicts of priority in national foreign intelligence collection activities.

(x) Establish appropriate committees or other advisory groups to assist in the execution of the foregoing responsibilities;

1-X01. Preparation of Sources/Methods and Procedures, The Director of Central Intelligence shall ensure that programs are developed which protect intelligence sources/methods and analytical procedures/procedures that this responsibility shall be limited within the United States to:

(a) Using lawful means to protect against disclosure by present or former employees of the CIA or the Office of the Director of Central Intelligence, or by persons of organizations presently or formerly under contract with such entities; and

(b) Providing policy/guidance and technical assistance to departments and agencies regarding protection of intelligence information, including information that may reveal intelligence sources and methods.

1-X02. Transfer of Authority. All responsibilities and authorities of the Director of Central Intelligence concerning tasking national foreign intelligence collection activities to the NIFC shall be transferred to the Secretary of Defense upon the express direction of the President. To maintain readiness for such transfer, the Secretary of Defense shall, with advance agreement of the Director of Central Intelligence, assume responsibility during regular practice exercises all responsibilities and authorities of the Director of Central Intelligence concerning the NIFC.

1-X03. Duties and Responsibility of the Heads of Executive Branch Departments and Agencies

(a) The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant Attorney General procedures give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States and shall, unless directed to the contrary by the President, honor all give due consideration to requests from the Director of Central Intelligence for appropriate support for Intelligence Community CIA activities.

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall:

(1) ensure timely development and submission to the Director of Central Intelligence of proposed national programs and budgets in the format designated by the Director of Central Intelligence, by the program managers and heads of component activities, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities.

(2) Establish, in consultation with the Director of Central Intelligence, rates of obligation for appropriated funds.

If so, access to CIA Intelligence. The Director of Central Intelligence shall, in accordance with law and relevant Attorney General procedures, give the Heads of the departments and agencies access to all intelligence developed by the CIA of the staff elements of the Office of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies.

(c) The heads of departments and agencies involved in the National Foreign Intelligence Program may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

1-X04. If so, Duties and Responsibilities of the Heads of the Intelligence Community Organizations. The heads of each of the organizations agencies within the Intelligence Community shall:

(a) If so, Ensure that all activities of their organizations agencies are carried out in accordance with applicable law and assigned missions.

(b) If so, Make use of the capabilities of other agencies within the Intelligence Community in order to achieve efficiency and mutual assistance.

(c) If so, Contribute in their areas of responsibility to the national foreign intelligence products.

(d) If so, Establish internal policies and guidelines governing employee conduct and ensure that such are made known to each employee.

(e) If so, Provide for strong, independent, internal means to identify, inspect, and report on unlawful or improper activity.

(f) If so, Report to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency, and report to the Attorney General evidence of possible violations by any other person of those federal criminal laws specified in guidelines adopted by the Attorney General. (To be replaced with language resulting from the discussions about the restriction sections.)

(g) If so, In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation.

(h) If so, Furnish the Director of Central Intelligence and the NSC and the SEC, in accordance with applicable law and Attorney General procedures, the information required for the performance of their respective duties;

(i) ~~17109~~ Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations which raise questions of legality or propriety;

(j) ~~17109~~ Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the Director of Central Intelligence and the NSC;

(k) ~~17111~~ Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

(l) ~~17111~~ Execute programs to protect against improper national security ~~of~~ classification of foreign intelligence;

(m) ~~17111~~ Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

(n) ~~17114~~ Ensure that the Inspectors General and General Counsel of their organizations ~~agencies~~ have access to any information necessary to perform their duties assigned by this Order.

1-Y. ~~178~~ The Central Intelligence Agency. All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, and other laws, regulations and directives, the CIA under the direction of the NSC shall:

1-Y01. Collect foreign intelligence, including information not otherwise obtainable, and develop, conduct, or provide support for technical and other programs which collection national foreign intelligence. The collection of information within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

1-Y02. Produce and disseminate foreign intelligence relating to the national security, including foreign political, economic, scientific, technical, military, geographic, biographic, and sociological intelligence to meet the needs of the President, the NSC, and other elements of the United States Government;

1-Y03. Collect, produce and disseminate strategic intelligence on foreign aspects of narcotics production and trafficking;

1-Y04. Conduct counterintelligence activities outside the United States and coordinate all counterintelligence activities conducted outside the United States by other departments and agencies; ~~within the intelligence capability~~

1-Y05. Coordinate all contacts outside the United States between departments and agencies and intelligence or internal security services of foreign governments;

1-Y06. Without assuming or performing any internal security functions, conduct counterintelligence activities within the United States, but only in coordination with the FBI and subject to the approval of the Attorney General;

1-Y07. Produce and disseminate counterintelligence studies and reports;

1-Y08. Coordinate the collection outside the United States of intelligence information not otherwise obtainable;

1-Y09. Conduct special activities approved by the President and carry out such activities consistent with applicable law;

1-Y10. Conduct services of common concern for the Intelligence Community as directed by the NSC;

1-Y11. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

1-Y12. Protect the security of its installations, activities, assets, information and personnel by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary;

1-Y13. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections 1-801 through 1-811 above, including procurement and essential cover and proprietary arrangements;

1-Y14. Provide legal and legislative oversight and administrative support services and other administrative support to the staff elements of the Office of the Director of Central Intelligence.

1-9. No change.

1-10. No change.

1-11. No change except:

1-1101. Collect national foreign intelligence and be responsive to the requirements of the Director of Central Intelligence ~~of~~ ~~intelligence~~ ~~tasking~~ ~~by~~ ~~the~~ ~~DCI~~;

1-12. No change except:

1-1201(b). Provision of military intelligence for national foreign intelligence products in accordance with guidance from the Director of Central Intelligence.

1-1202(c). Collection of signals intelligence information for national foreign intelligence purposes in accordance with guidance from the Director of Central Intelligence ~~tasking~~ ~~by~~ ~~the~~ ~~DCI~~;

1-1202(d). Processing of signals intelligence data for national foreign intelligence purposes in accordance with guidance from ~~consistent with~~ ~~standards for~~ ~~intelligence~~ ~~established~~ ~~by~~ the Director of Central Intelligence;

1-1203(b). Responding to guidance from the Director of Central Intelligence ~~tasking~~ ~~through~~ ~~the~~ ~~DCI~~; and

1-1204(a). Collection, production and dissemination of military and military-related foreign intelligence, including information on indications and warnings, foreign capabilities, plans and weapons systems, scientific and technical developments and narcotics production and trafficking. When collection production or dissemination is conducted in response to national foreign intelligence requirements, it will be conducted in accordance with guidance from the Director of Central Intelligence ~~tasking~~ ~~by~~ ~~the~~ ~~DCI~~. Collection of national foreign intelligence, not otherwise obtainable, outside the United States

shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

1-13. No change.

1-14. No change.

1-15. No change.

4-210(e) Eliminate.

10 / MAR 1981

MEMORANDUM FOR: General Counsel

FROM: Max Hugel
Deputy Director for Administration

SUBJECT: Proposed Changes to Non-Restriction Sections
of Executive Order 12036

REFERENCE: Memorandum from GC to DDA, dated 20 March 1981,
same subject (OGC 81-02321)

The Directorate of Administration has reviewed Sections 1, 3 and 4 of Executive Order 12036 for the purpose of suggesting possible revision. As a result of this study, the following changes are suggested:

Sections 1-601(h) and 1-712 should be amended to address underclassification as well as overclassification of documents. Accordingly, these sections should be reworded to read as follows:

Section 1-601(h). "Conduct a program to protect against the improper national security classification of foreign intelligence information."

Section 1-712. "Execute programs to protect against the improper national security classification of foreign intelligence information."

Section 1-811. Under this section, the Agency is authorized to "protect the security of its installations, activities, information and personnel by appropriate means, etc." It is believed that it would be desirable to include the word "assets" as this would embrace such things as monetary assets and even defectors. We currently operate under the assumption that the word "activities" is sufficiently broad to include defectors and even monetary assets, but the word "assets" would certainly add a desirable dimension.

Max Hugel

Distribution:

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TRANSMITTAL SLIP		DATE	2 Apr 81			
TO:	D/ODP					
ROOM NO.	BUILDING					
REMARKS:						
<p>OGC has made the suggested changes in E.O. 12036 (see copy of memo from DDA, attached) and is requesting that the Offices again look at E.O. 12036.</p> <p>Would you please call [] [] in Security with any comments you wish to make. The deadline on this is today, 2 April.</p> <p><i>Typo on page 5 given to EO/DDA by telephone, 2 Apr 81 G.D.</i></p>						
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FORM NO. 241
1 FEB 55REPLACES FORM 35-8
WHICH MAY BE USED.

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